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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/699,921

11/03/2003

Dennis M. Treu

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PROSKAUER ROSE LLP
PATENT DEPARTMENT
1585 BROADWAY
NEW YORK, NY 10036-8299

EXAMINER

WIEST, PHILIP R

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

11/09/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/699,921	Applicant(s) TREU, DENNIS M.	
	Examiner Phil Wiest	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/24/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-69 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 03 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/24/07 has been entered.

Response to Amendment

2. In the response filed on 8/24/07, applicant cancelled claims 1-18 and added new claims 19-69. Claims 19-69 are currently pending.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 19-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Causey, III et al. (US 6,113,554) in view of Gilcher (US 6,113,554).

5. Causey, III et al. (hereafter Causey) discloses a medical treatment device that can be connected to a computer (monitor unit) 6, the system comprising a treatment unit 400, a monitor unit 6, said treatment unit 400 comprising an infusion pump that delivers a medical treatment to a patient. The treatment unit 400 comprises a control panel (see Figure 7) having user-accessible controls. The monitor unit 6 is capable of receiving data from the treatment unit 400 and sensors via a common control unit (200, 300) (Column 23, Lines 49-52) and outputting at least data relating to the status of the treatment being delivered on a display portion 12. Additionally, the monitor unit is capable of outputting a variety of treatment information including graphical information, sensor data, and data that is not shown on the treatment device. Regarding the one-way transmission of data, Causey, III et al. further discloses that the computer 6 (monitoring portion) is capable of receiving data from the treatment unit 400 via a medical device module 200 for analysis (Column 23, Lines 49-52 and Figure 10), but does not disclose the computer 6 transmits data back to the medical device module 200 (as demonstrated by the one-way arrow to the communication station in Figure 10). Therefore, Causey, III et al. discloses a one-way communication channel between the treatment unit (400 by way of 200) and the monitoring device 6, such that the treatment machine 400 is not affected by a data-processing software being operated by the monitor device 6. Causey also discloses that the treatment unit 400 and monitor unit 6 are connected to a common control unit (200, 300) (see Figures 7 and 10). The common control panel (200, 300) is capable of controlling and receiving data from the treatment unit 400, as well as transferring said data to the monitoring unit 6. Because

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the monitoring unit 6 does not transmit data back to the common control unit (200, 300), as shown by the one-way arrow in Figure 10, any signals from the monitor unit 400 are prevented from affecting a state of the treatment unit 400.

6. Causey discloses the device substantially as claimed, but does not disclose that the treatment unit and monitor unit are permanently attached together and housed within a common housing.

7. Gilcher et al. disclose a blood collection system comprising a housing 14 that houses a monitor unit 10 and a treatment unit 12. The housing further comprises a control panel 72. The use of a unitary construction allows the monitor unit 10 and the treatment unit 12 to be simultaneously monitored and prevents the need for wireless communication between devices. Furthermore, the use of a one-piece construction instead of multiple, distinct parts is merely a matter of obvious engineering choice. See MPEP § 2144.04. Therefore, it would have been obvious to one skilled in the art at the time of medical treatment device of Causey, III et al. with the unitary housing of Gilcher et al. in order to provide a simplified unit for medical treatment that does not comprise several parts. Furthermore, Causey et al. disclose that the device was broken into components in order to improve price and upgradability, and that some devices would preferably be combined into a single device. The components that comprise the medical treatment device are more than capable of functioning as a singular unit in a common housing.

Response to Arguments

8. Applicant's arguments filed 8/24/07 have been fully considered but they are not persuasive.

9. Applicant argues that Causey does not disclose a one-way communication channel. This argument has not been found persuasive. Causey clearly discloses the use of a one-way communication channel in Figure 10. Even though the flow of data disclosed by Figure 10 is based on one particular mode of operation, the device is fully capable of operating in this manner at any point during the operation. Data processing is done by an external computer and does not involve the use of the treatment device whatsoever. This data is graphed by the computer (monitoring unit) completely separately from the treatment device 400.

10. Applicant also argues that Causey teaches away from the use of a common housing because Causey's device relates to remote programming of a handheld device. This argument has also not been found persuasive. The device of Causey comprises the same structural components as the device claimed by applicant, and is fully capable of functioning in the same manner. The Gilcher reference was used to show that configuring a monitoring unit and treatment unit integrally in the same housing is well established in the art. The use of a unitary housing for the treatment and monitor units is metely a matter of obvious engineering choice, and one of ordinary skill in the art would have been motivated to provide a unitary housing in order to integrate the units, thereby providing a single control station such that the units could be monitored simultaneously. See MPEP § 2144.04.

11. Furthermore, It is not clear what structural elements are present in applicant's device that allow only one-way communication between the monitor and treatment units.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phil Wiest whose telephone number is (571) 272-3235. The examiner can normally be reached on 8:30am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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PRW
11/2/07

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Tatyana', written in a cursive style.